

P R O C E E D I N G S

THE COURTROOM DEPUTY: Civil Case 2015-494, Amy Patterson versus Two Fingers, LLC, et al. This is the time set for a scheduling conference.

Counsel, please announce for the record.

14:26:06

MR. STROJNIK, SR.: Good afternoon, Your Honor. Your Honor, my name is Peter Strojnik. For clarification, perhaps I should be referred to as Strojnik, Sr., because my lead counsel, co-counsel, Peter K. Strojnik, has the same name. I became aware of this case yesterday. I did actually file a notice of appearance then.

14:26:19

THE COURT: All right.

MR. PANTILIAT: Good afternoon, Your Honor. I'm Ed Pantiliat. I represent the defendants along with my co-counsel, Mr. Jason Mullis. I represent Two Fingers, Four Fingers, Six Fingers, and the Popo defendants.

14:26:31

THE COURT: Counsel, none of you have been filing courtesy paper copies of your filings. You are required to supply the Court with one paper copy of your filings within 24 hours of them being filed if they are more than 10 pages long. So please get those in.

14:26:48

And Mr. Pantiliat, I can't find a form of Temporary Restraining Order that you submitted. Have you?

MR. MULLIS: Your Honor, we did have a Temporary Restraining Order and I will send it over.

14:27:07

1 THE COURT: I can't find it. Do you have a copy?

2 Do you know what docket number it is in our filings?

3 What document number is it? I can't find it in our filings.

4 MR. MULLIS: I'm trying to identify here.

5 THE COURT: It's not attached to your motion.

14:28:20

6 There's no form of injunction attached to your motion or any of
7 your memoranda, I don't think.

8 MR. MULLIS: Your Honor, it looks like in the records
9 I have, I do not have a copy of that with me today.

10 THE COURT: Where is it on our index?

14:29:30

11 MR. MULLIS: I thought it was supposed to be attached
12 to Number 14.

13 THE COURT: What is Number 14?

14 MR. MULLIS: It is the petition to show cause for the
15 Order to Show Cause.

14:29:40

16 THE COURT: I thought I looked at that.

17 Nick, pull it up and see if there's a form of order
18 attached to it.

19 It's an Order to Show Cause. It's not a restraining
20 order.

14:30:11

21 MR. MULLIS: Apologize, Your Honor.

22 THE COURT: Do you have a paper copy?

23 MR. MULLIS: I do not have a paper copy for some
24 reason.

25 THE COURT: So I really don't know what you are asking

14:30:29

1 for. And I set this as a scheduling conference to set this for
2 scheduling. And part of that has to do with how much time you
3 think you want and how much time I will give you, the degree of
4 urgency.

5 So Mr. Peter K. Strojnik, are you the third party
6 defendant? 14:30:47

7 MR. STROJNIK, JR.: Yes, Your Honor.

8 THE COURT: This doesn't look like a third party
9 complaint at all. It looks like an additional counter
10 defendant. Have you all thought about that, defendants? You
11 can't just sue anybody you want by calling them a third party
12 defendant. It has to be a matter of indemnity. It looks like
13 you are asserting an independent claim against Mr. Strojnik.

14 Is that the case? 14:31:04

15 MR. PANTILIAT: That is the case, Your Honor. 14:31:15

16 THE COURT: So you need to clean up your pleadings to
17 name him as an additional counter defendant, which the Court
18 will grant you leave to do that.

19 MR. PANTILIAT: Thank you, Your Honor.

20 THE COURT: So I want to talk about the degree of
21 urgency. And, you know, a significant part of that, and I will
22 hear from Mr. Pantiliat on that. A significant part of that is
23 the extent to which Mr. Strojnik is willing to cease this
24 conduct until we can get in court to discuss it. 14:31:27

25 So go ahead. 14:31:50

1 MR. PANTILIAT: Thank you, Your Honor.

2 THE COURT: Please come up to the podium where the
3 microphone is better.

4 MR. PANTILIAT: Thank you, Your Honor.

5 The reason that we're seeking the injunction against 14:32:01
6 harassment against not only the plaintiff but her counsel is
7 because they have engaged in a systematic and comprehensive
8 campaign against my client.

9 THE COURT: Are you seeking an injunction against both
10 Ms. Patterson and Mr. Strojnik? 14:32:14

11 MR. PANTILIAT: Yes, Your Honor.

12 THE COURT: Go ahead.

13 MR. PANTILIAT: The reason being is because her
14 attorney, counsel, has created websites
15 StoneVineSexualAllegations.com. He's also created and 14:32:26
16 disseminated flyers. He is also personally posting, on
17 Facebook, posts on my client's businesses, making allegations
18 against my client. He's using my client's images in his photo
19 alleging that he's a sexual predator. They have papered the
20 parking lot several times of my client's businesses with flyers 14:32:49
21 on all the vehicles of the customers.

22 THE COURT: What's your basis -- I will ask Mr.
23 Strojnik in a minute -- what's your basis for saying he's doing
24 this in addition to --

25 MR. PANTILIAT: Because he has created the website. 14:33:00

1 He is personally making the posts. He is personally appearing
2 on the posts to contact him. These are all conducts that are
3 being performed by him personally, Your Honor. Whether or not
4 they are on behalf of his client, I'm not sure.

5 THE COURT: What's our degree of urgency? Have you 14:33:17
6 talked with Mr. Strojnik about voluntarily ceasing this until
7 we can promptly get into court to have a hearing on it?

8 MR. PANTILIAT: Well, Your Honor, we did that before.
9 We asked him to take down the website and not to engage in
10 these propagandist tactics while we were conducting an 14:33:32
11 investigation, perhaps trying to resolve this claim amicably.
12 There was a settlement offer made and rejected.

13 THE COURT: Right now all I'm talking about is the
14 temporary restraining order.

15 MR. PANTILIAT: Correct, Your Honor. Didn't believe 14:33:47
16 if we asked him to take up them down he would listen. We've
17 asked him several times. He's also contacted our landlord,
18 made derogatory allegations to our landlord regarding our
19 business -- alleged business practices. Our landlord issued
20 him a cease and desist letter from their own counsel. This is 14:34:02
21 just going on. Every day there's something new, something
22 different, new post, new site. There's a site called dirty.com
23 that he's posting on as well. He's involving other businesses
24 that apparently had a relationship to his client whatsoever.
25 And it's very harmful. He's alleging an adulteress affair on 14:34:23

1 behalf of my client and it's causing angst and discord in his
2 marriage.

behalf of my client and it's causing angst and discord in his marriage.

THE COURT: How much time do you want -- well, first of all, on a temporary restraining order the Court can consider the affidavits. Is there more you want in terms of any live evidence?

MR. PANTILIAT: Not today, Your Honor.

THE COURT: I mean, or on a hearing. I'm here to talk about setting a hearing at which time I will rule on your motion promptly.

MR. PANTILIAT: Thank you.

THE COURT: Do you wish to present any evidence other than the affidavit?

MR. PANTILIAT: No, Your Honor. Just the affidavit.

THE COURT: All right.

MR. PANTILIAT: So we can get the hearing done in an expeditious manner and I'd like a schedule as soon as possible.

THE COURT: Who is going to be counsel on this one?

MR. STROJNIK, SR.: I am, Your Honor.

THE COURT: All right. So first question is, I'm looking at addressing this. And the first question, Mr. Strojnik, is -- and I guess your clients include your son now, too, correct?

MR. STROJNIK, SR.: My co-counsel, yes.

THE COURT: Right. The first question is, is are you

1 all willing to just maintain a quiet status quo for a brief
2 period of time while the Court can consider this and rule on
3 it?

4 MR. STROJNIK, SR.: Well, in fact, Your Honor, when we
5 walked up to the courthouse today I extended my hand to 14:35:47
6 counsel. He said I'm not going to shake your hand. I never
7 met counsel. Apparently there's a great deal of bad blood
8 between the parties and I think it's time for the adults to
9 come into the case and try to resolve this matter. I would be
10 more than happy to discuss the matter with counsel. 14:36:02

11 THE COURT: I'm really not talking about discussion.
12 I'm talking about an agreement now to stop all this until the
13 Court can address it and I can address it early next week if
14 not later today.

15 MR. STROJNIK, SR.: I can, Your Honor, but I would 14:36:17
16 like to be heard on two issues, if I may, before you make a
17 decision on this.

18 THE COURT: Well, I'm asking you whether you are --

19 MR. STROJNIK, SR.: Yes. Yes. Absolutely.

20 THE COURT: -- agreeing. 14:36:26

21 MR. STROJNIK, SR.: Absolutely. Now we can take the
22 website down but that takes a little bit of time. But we can
23 do it as expeditiously as possible.

24 But what I would like to address, Your Honor, is the
25 following: You have heard a lot of factual issues, but there 14:36:37

1 is a primary, very fundamental constitutional issue. And that
2 issue is whether or not district courts have generally imposed
3 prior restraint on allegedly defamatory speech. From the
4 Supreme Court on down, and I have researched there between
5 yesterday and today, but from the Supreme Court on down all
6 decisions hold that it is prior restraint --

14:37:00

7 THE COURT: I don't think so, Mr. Strojnik. I think
8 for commercial defamation the Court can restrain that. And
9 this is classic commercial defamation.

10 MR. STROJNIK, SR.: What I would like to do, and what
11 I had begun doing before I appeared before the Court today, I
12 would like to present you with a memorandum of this issue. I
13 believe I can do that by Monday. And I would just like to
14 point out to you the cases where they do the exact same thing,
15 websites. And there are some cases where district courts
16 actually find that unions are engaged in intimidating tactics
17 and the courts uniformly hold it doesn't matter. And the
18 reason for that, Your Honor, is that on the one hand, the
19 speech may be chilled by the potential of damages in a
20 defamation action. But when the Court issues an injunction,
21 speech is frozen. It is ultimate. It is final.

14:37:17

14:37:39

14:37:59

22 THE COURT: No, it's not final. It's only for the
23 very brief period of time the Court needs to reach a fuller
24 adjudication on the merits.

25 MR. STROJNIK, SR.: Yes. Of course I defer to that

14:38:17

1 opinion because it is obviously correct.

2 But a point, and there's a second point. The third
3 party complaint, or the complaint against Mr. Strojnik does not
4 arise out of the same operative nucleus of facts as the
5 complaint.

14:38:38

6 THE COURT: Well, this, as I said, is actually an
7 additional counter defendant. And you can assert, under the
8 rules, any counterclaim against a plaintiff. Doesn't have to
9 be the same transaction.

10 MR. STROJNIK, SR.: It is.

14:38:53

11 THE COURT: The issue of bringing Peter K. Strojnik in
12 really has to do with his alleged direct essential involvement
13 in that same conduct and whether he's an appropriate additional
14 defendant, counter defendant, which appears to me quite clear
15 that it would be. So I think that's the answer to the
16 procedural issue that any counterclaim can be asserted against
17 a plaintiff, although this does appear to be, at least some
18 aspects of the alleged defamation, appears to directly relate
19 to the same subject matter.

14:39:14

20 Anyway, go ahead, Mr. Strojnik.

14:39:30

21 MR. STROJNIK, SR.: I defer to that opinion.

22 Your Honor, as I indicated earlier, I would be happy
23 to make an agreement to take down whatever offensive website
24 there might be and do it expeditiously.

25 THE COURT: It's not just that, it's a cessation of

14:39:46

1 the leafleting and all that.

2 MR. STROJNIK, SR.: Of course. Of course.

3 In turn, we would like Mr. Popo to take down the entry
4 on thedirty.com where he signs his name as, "Amy Patterson is a
5 whore," and says the following: "This girl, Amy Patterson, is
6 such a whore. Everyone knows she fucks anything and
7 everything" --

14:40:03

8 MR. PANTILIAT: Your Honor, could I be heard on that?

9 THE COURT: No, you can't, until he's done.

10 MR. STROJNIK, SR.: "She sends nude photos to
11 everyone. I will have to dig some out, Amy. I still have
12 them. I heard you filed this BS. Nice try looking for a
13 payday."

14:40:16

14 THE COURT: What is this thing this is posted on?

15 MR. STROJNIK, SR.: This is thedirty.com. This is
16 where you file, apparently, and I am not fully familiar with
17 the concept, but the concept is that if you want to say
18 something really bad about somebody and not be found that's
19 where you go.

14:40:29

20 THE COURT: Is it some local venue?

14:40:44

21 MR. STROJNIK, SR.: I think it's Scottsdale and Tempe.
22 I think it is local. And it goes on and it says, "GTFO here
23 everyone is laughing at your fake shit."

24 Now, I didn't know what GTFO meant until today, and I
25 would be happy to explain it, but the ladies would have to

14:41:02

1 cover their ears if I did so.

2 So I will take down, or I will cease whatever the
3 allegations are against us until the Court has the opportunity
4 to rule on this. Before we do that, I mean, at the same time,
5 I would like Mr. Popo to go to dirty.com and take off all his 14:41:20
6 stuff. And I would also like the Court to give me the
7 opportunity to present you with a memorandum on this matter and
8 I can do that by Monday. And then I would like a hearing.

9 THE COURT: Mr. Pantiliat, have you looked at the
10 restraining issue? I mean, you have a paragraph in your 14:41:44
11 supplemental briefing about no constitutional problem.

12 MR. PANTILIAT: Yes, we have, Your Honor.

13 MR. MULLIS: Your Honor, it's the *Gentile* case and it
14 talks about the constitutional standard is substantial
15 likelihood of material prejudice. And it's the impact upon a 14:41:56
16 lawyer under Rule 3.6 of the professional conduct. And that is
17 a restraint upon the lawyer. And there is a different standard
18 between a lawyer and an individual. What we're dealing with
19 here is a lawyer's conduct.

20 THE COURT: If it were not a lawyer, would there be a 14:42:11
21 prior restraint issue?

22 MR. MULLIS: There would be -- it's a lesser bar, but
23 with a picture of calling Mr. Popo a sexual predator that would
24 not fall within the same scope because that is defamatory
25 conduct and it is different. 14:42:28

1 THE COURT: Well, I'm -- of course, Mr. Strojnik, any
2 time the Court is dealing with an emergency restraining order
3 the Court has to make the best judgment it can. And it's
4 always subject to revision with further information. But my
5 initial sense is there's no difficulty in entering a
6 restraining order against this conduct. It's flagrantly
7 defamatory. It's business defamation. It is grossly, grossly
8 unprofessional conduct of a lawyer to do this. And, of course,
9 this Court doesn't concern itself with those processes but I
10 wouldn't be surprised if they get into play eventually.

14:42:51

14:43:11

11 So I am going to ask you all -- I'm going to take a
12 short recess and ask you all to pursue this discussion I have
13 just invited. I don't think it will take long at all.

14 I will enter a restraining order today against this
15 conduct if you can't work this out.

14:43:39

16 So what time is my next -- is it 3:30?

17 THE COURTROOM DEPUTY: 3:30.

18 THE COURT: I'm going to give you until 3:00 to
19 discuss this.

20 MR. STROJNIK, SR.: Okay.

14:43:49

21 MR. PANTILIAT: Your Honor, if I could just be heard.

22 THE COURT: You know, I said I will enter a
23 restraining order, but I don't have the order you want to enter
24 so I won't enter anything until I get your order and I have a
25 chance to look at it and am satisfied it meets the requirements

14:43:59

1 of a restraining order which, by the way, are technical and
2 real under Rule 65. I see a lot of restraining orders that are
3 not proper. They are overbroad and not specific. So if you
4 give me something like that, we'll just wait until Monday so
5 you can give me something that's right.

14:44:15

6 MR. PANTILIAT: We'll try to get you an order by the
7 end of the day today, Your Honor, if not sooner.

8 THE COURT: I'm expecting that won't be necessary
9 because I'm expecting the next 15 minutes you will reach a
10 resolution, a temporary over the weekend so we can deal with
11 this next week.

14:44:26

12 MR. PANTILIAT: Your Honor, if I could just be heard,
13 one of the conditions Mr. Strojnik made on him relinquishing or
14 taking down the website and so forth, is that we remove a post
15 from thedirty.com he had put into the record. We did not make
16 that post.

14:44:41

17 THE COURT: I do want to speak about that.

18 Mr. Strojnik, I understand why you said that because
19 that's how lawyers operate. But I want to be clear: I am not
20 dealing with anything you want from them because you haven't
21 sued them yet. I'm only dealing with the restraining order in
22 front of me, and I want to have this resolved in a reasonable,
23 appropriate way so that it will stop until we can get back to
24 court promptly or I will enter an order.

14:44:54

25 Now, I want you all to resolve this. And if you

14:45:08

1 can't, then it's my job to enter something.

2 MR. STROJNIK, SR.: I think that's a great resolution,
3 Your Honor.

4 THE COURT: We'll be in recess until 3:00.

5 (Recess from 2:45 p.m. until 2:57 p.m.)

14:45:20

6 THE COURT: Counsel, have you been able to reach a
7 short-term resolution for us?

8 MR. STROJNIK, SR.: We have, Your Honor.

9 THE COURT: What would you like to put on the record?

10 MR. PANTILIAT: Your Honor, I don't believe we have.

14:57:11

11 THE COURT: Well, all right. Then do you need to talk
12 some more, or is it over?

13 MR. PANTILIAT: No, Your Honor, because one of the
14 issues that we're having is they are agreeing to take down
15 everything and cease their actions, but they are not agreeing
16 to have their client abide by the same terms claiming that they
17 have no power to bind her to any such agreement.

14:57:25

18 THE COURT: You most assuredly do have the power to
19 bind your client.

20 Where is she?

14:57:40

21 MR. STROJNIK, SR.: The question, Your Honor, really
22 is moot. The client has no control over this matter. I have
23 agreed with counsel to take down the website.

24 THE COURT: Come speak into the microphone because I
25 can't hear you.

14:57:52

1 MR. STROJNIK, SR.: The question really is moot,
2 because I have agreed with counsel to take down the website. I
3 have agreed with counsel to take down the Facebook. I have
4 agreed with counsel to cease and desist all the flyers.

5 THE COURT: And has Peter K. Strojnik been the one who 14:58:11
6 did -- is he solely responsible for these things?

7 MR. STROJNIK, SR.: Actually, Facebook, add and
8 subtract -- the client is adding and subtracting from Facebook
9 and she is actually the one involved with the flyers at the
10 current time. 14:58:27

11 I don't know if this case that counsel, Jason -- and I
12 apologize, I forgot his last name -- I think the case name is
13 *Gentile*. Apparently, there's a difference between lawyers and
14 clients. I don't know what that is. But so far as the interim
15 period is concerned, I think I would feel comfortable agreeing 14:58:46
16 to call my client to tell her to cease and desist as well and
17 bind her in court today. And then once I have had the
18 opportunity to review the entire case, I think the entire
19 matter may simply go away, because I may agree with this
20 process. 14:59:05

21 THE COURT: Mr. Pantiliat, sounds like you are pretty
22 close.

23 MR. PANTILIAT: This could be a play, Your Honor, to
24 circumvent the whole issue and have the website up and running,
25 have the Facebook posts back, have the flyers back and just 14:59:21

1 allege it's his client doing all these actions.

2 THE COURT: I may not have an injunction by the end of
3 the day anyway, because you did not submit a form of injunction
4 to me in time for me to prepare for it and may not before I
5 leave today. So this may not be enjoined over the weekend
6 anyway. 14:59:38

7 But, you know, clients -- lawyers can usually control
8 clients, because the clients have reasons for having their
9 lawyer.

10 MR. STROJNIK, SR.: Absolutely, Your Honor. I feel 14:59:54
11 confident that I can do this, and I'm confident that the client
12 would abide by my consenting in court today. In other words,
13 we are giving everything that counsel wants.

14 THE COURT: All right. Frankly, I think that's good
15 enough. And if, in fact, this does continue over the weekend, 15:00:13
16 I will see you on Monday. And also, Mr. Strojnik, if you want
17 to file a legal brief by 8:00 on Monday morning on prior
18 restraining, of course I will read it. I think I'm generally
19 familiar with that. But so at this point there is no order.
20 We have an agreement that it is in the interest of everyone to 15:00:47
21 honor, because if it does not get honored this matter looks
22 like it could have enormous consequences for both sides and
23 counsel.

24 MR. STROJNIK, SR.: And as I said, Your Honor, I have
25 been involved in this case in the last 24 hours. It could very 15:01:06

1 well be by Monday the entire case, the entire matter would be
2 resolved.

3 THE COURT: All right. Mr. Pantiliat is there
4 anything more you would like to say?

5 MR. PANTILIAT: Would you like us to still submit an
6 order, Your Honor? 15:01:18

7 THE COURT: The answer is yes, not because I'm going
8 to enter it. I want to have it in case things blow up and I
9 have to enter an order on Monday if this interim agreement
10 falls apart. But right now I'm expecting that it will not,
11 that all this will cease immediately and you all can get back
12 to the substance of your respective clients' underlying claims. 15:01:31

13 MR. STROJNIK, SR.: Yes, Your Honor. Thank you, Your
14 Honor.

15 THE COURT: All right. 15:01:47

16 MR. PANTILIAT: Thank you, Your Honor.

17 THE COURT: Anything else, Mr. Pantiliat?

18 MR. PANTILIAT: No, Your Honor. Thank you.

19 THE COURT: Very well then. Thank you. We'll be
20 adjourned. 15:01:53

21 MR. STROJNIK, SR.: Your Honor, I'm sorry. The
22 website is run by a website person. We will tell him
23 immediately to take it down.

24 THE COURT: Just have a good record of your immediate,
25 prompt, good faith efforts and directions. 15:02:10

1 MR. STROJNIK, SR.: I will get an e-mail out today. I
2 will send you a copy Monday.

3 MR. PANTILIAT: Your Honor, one last thing. Is there
4 a hearing that's going to be set?

5 THE COURT: Actually, yes. That was the whole point. 15:02:20

6 I could -- depending on the time urgency now, if the
7 time were really urgent, I could see you all on, I think,
8 Tuesday at 3:00 or Wednesday morning. I will set this for
9 Wednesday morning at 9:00. However, if things unravel and this
10 harm continues, all I need is immediate notice and I will 15:02:53
11 accelerate this like any emergency temporary retraining order,
12 maybe even until late Monday.

13 MR. PANTILIAT: Thank you.

14 MR. STROJNIK, SR.: Your Honor, we agree to not do
15 anything until the Court rules. I have a huge mediation 15:03:08
16 Wednesday, I mean, enormous. Will you still request a hearing
17 on that day?

18 THE COURT: I will set it on Tuesday at 3:00 then.

19 Wait. Wait. I am expecting that even if you all do
20 not settle the entire case you will resolve this part of it and 15:03:30
21 I will not have to have a hearing. That's what I'm expecting.
22 If that does not happen, I will have the hearing on Tuesday at
23 3:00 as the fallback.

24 Oh. That's right. I have got a dentist appointment.
25 I should be back by 4:00 then. So we can set it at 4:00. 15:03:50

1 MR. STROJNIK, SR.: In the meantime, if we simply
2 agree to continue this indefinitely then we're good to go.

3 THE COURT: Submit something in writing.

4 It is ordered setting hearing on the application for
5 temporary restraining order for this Tuesday, I think that's
6 the 7th of April, at 4:00. Now, I'm expecting -- I am hoping
7 it will go away. If it doesn't, we will deal with it then.
8 We'll be adjourned until 3:30.

9 (Proceeding concluded at 3:04 p.m.)

15:04:06

C E R T I F I C A T E

I, LAURIE A. ADAMS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 19th day of May, 2015.

s/Laurie A. Adams

Laurie A. Adams, RMR, CRR